

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #15	CCRB Case #: 201800901	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/02/2018 1:00 AM	Location of Incident: At 247 Dyckman Street (Mamajuana Cafe)	Precinct: 34	18 Mo. SOL 8/2/2019	EO SOL 8/2/2019	
Date/Time CV Reported Fri, 02/02/2018 1:43 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 02/02/2018 1:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Jenkins	27817	928536	034 PCT
2. POM Giancarlo Alia	02843	927847	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Jenkins	Abuse: Police Officer Michael Jenkins stopped § 87(2)(b)	
B.POM Giancarlo Alia	Abuse: Police Officer Giancarlo Alia stopped § 87(2)(b)	
C.POM Giancarlo Alia	Abuse: Police Officer Giancarlo Alia frisked § 87(2)(b)	
D.POM Michael Jenkins	Abuse: Police Officer Michael Jenkins refused to provide his shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed the following complaint with the CCRB on February 2, 2018 via the online website.

On February 2, 2018, § 87(2)(b) smoked hookah inside of Mamajuana Café located at 247 Dyckman Street in Manhattan. At some point § 87(2)(b) went to the restroom and returned to find his hookah missing. § 87(2)(b) got into a verbal altercation with the staff of Mamajuana Café and exited the establishment after he was threatened by an unidentified staff member with a bar stool. Once outside, PO Michael Jenkins and PO Giancarlo Alia of the 34th Precinct arrived. The manager of the establishment, § 87(2)(b) yelled at the officers that § 87(2)(b) had a gun. Both officers approached § 87(2)(b) and asked if he had a gun (**Allegation A – Abuse of Authority:** § 87(2)(g)) (**Allegation B – Abuse of Authority:** § 87(2)(g)) PO Alia then frisked § 87(2)(b)'s pants, up and down the legs (**Allegation C – Abuse of Authority:** § 87(2)(g)) § 87(2)(b) requested PO Jenkin's shield number and PO Jenkins replied by asking why § 87(2)(b) needed his shield number and did not verbally provide it (**Allegation D – Abuse of Authority:** § 87(2)(g))

There is no video footage associated with this case.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Michael Jenkins stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Giancarlo Alia stopped § 87(2)(b)

On the date of the incident § 87(2)(b) got into a verbal altercation with the staff of Mamajuana Café over refunding hookah that he smoked earlier (Board Review 01). § 87(2)(b) wore a gray sweatshirt, grey sweatpants, a jacket, pink and gray sneakers, sunglasses and a maroon skullcap. One of the staff members threatened him with a bar stool, so he left the location. PO Jenkins and PO Alia arrived and immediately approached § 87(2)(b) outside of the establishment, told him to put his hands up (Board Review 02).

§ 87(2)(b) provided a telephone statement but did not provide an in-person verified statement. § 87(2)(b) stated that § 87(2)(b) threatened to kill the staff of the hookah lounge and stated he had a gun. An unidentified bartender called the police and § 87(2)(b) specifically told the bartender to state that there was a man with a gun inside of the establishment (Board Review 03).

PO Jenkins stated that there was a radio run with a very detailed description of a man with a gun at Mamajuana Café. Upon arriving, § 87(2)(b) was outside of the establishment, yelling at the employees and matched the description provided on the radio, although PO Jenkins could not recall at the time of the interview what the description was (Board Review 04).

PO Alia's statement was consistent with PO Jenkins, including that § 87(2)(b) stood outside of the establishment and matched the physical and clothing description provided on the radio perfectly. PO Alia also noted in his memo book that the description provided was a black male with a gray hoodie and gray sweatpants (Board Review 05).

In the 911 call made from inside the establishment a female stated that there was a man starting problems with a gun. She specified that she thought she saw a physical gun in § 87(2)(b)'s hand. She also described him as having a gray hoodie and gray sweatpants (Board Review 06).

According to the EVENT for the incident, the 911 call was placed at 0054 hours and police were on scene at 0055 hours. The female caller stated that it looked like § 87(2)(b) took a gun out. During the 911 call, the caller confirmed that officers had arrived on scene while she was still on the phone (Board Review 11).

The Stop, Question and Frisk report prepared by PO Alia contained details consistent with PO Alia's statement. The report noted the description provided for § 87(2)(b) and that § 87(2)(b) had his right hand in his right pants pocket (Board Review 12).

Absent flight, a general description combined with spatial and temporal proximity to the scene of the reported crime will also provide reasonable suspicion. People v. Samuels, 977 N.Y.S.2d 654 (4th Dept - 2014) (Board Review 09). With sufficient spatial/temporal proximity to the reported crime, and to police action related to the crime, even a partial match of a general description can provide reasonable suspicion. See People v. Brown, 11 N.Y.S.3d 616 (2nd Dept - 2015)(reasonable suspicion when defendant partially matched a general description and was seen walking near railroad tracks where police had earlier pursued two suspects) (Board Review 09).

§ 87(2)(g)

Allegation C – Abuse of Authority: Police Officer Giancarlo Alia frisked § 87(2)(b)

According to § 87(2)(b) PO Jenkins and PO Alia approached him and asked if he had a gun. § 87(2)(b) believed that someone from the café had reported that he had a gun. PO Alia frisked up and down § 87(2)(b)'s pants legs.

PO Jenkins testified that as he and PO Alia approached, employees from the establishment yelled, "Pull your gun out now" towards § 87(2)(b). PO Jenkins observed § 87(2)(b) had his right hand in his right pants pocket. PO Alia asked him to take his hand out of his right pants pocket and frisked his right pants pocket to make sure he did not have a weapon.

PO Alia was consistent that he frisked § 87(2)(b) due to the nature of the radio run. He stated that he and PO Jenkins approached § 87(2)(b) who explained the whole situation and stated that § 87(2)(b) threatened to shoot the employees. § 87(2)(b) did not have a visible firearm but had his right hand in his right pants pocket. PO Alia explained that he frisked § 87(2)(b)'s right pants pocket because he had his right hand in his pocket the whole time as they approached. PO Alia also prepared the Stop, Question and Frisk report which noted that § 87(2)(b) had his hand in his right pocket and was asked to remove it.

A protective frisk is intended to reveal concealed weapons on a detained person and

"should not be extended beyond its purpose or securing the safety of an officer. People v. Lipscomb, 179 A.D. 2d 1043 (1992) (Board Review 13).

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Michael Jenkins refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that he asked PO Jenkins for his shield number and PO Jenkins replied by asking why he needed it. § 87(2)(b) took a mental note of PO Jenkins' name and shield numbers by looking at his nameplate and shield. PO Jenkins did not verbally state his shield number to § 87(2)(b)

§ 87(2)(b) did not hear § 87(2)(b) request names and shield numbers from either officer.

PO Jenkins stated that § 87(2)(b) asked for his name and shield number and he provided both, verbally, to § 87(2)(b). He also stated that § 87(2)(b) made a note of the information in his cellphone.

PO Alia also stated that § 87(2)(b) asked for both of their names and shield numbers and both of them verbally provided them to him. He stated that § 87(2)(b) walked away as soon as he received the information.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- PO Jenkins has been a member of service for 16 years and this is the first CCRB complaint to which he has been a subject.
- PO Alia has been a member of service for 16 years and has been a subject in 8 CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- On February 9, 2018, this case was sent to mediation and on March 13, 2018, the case was returned to investigation as the complaint was no longer eligible for mediation.
- A Notice of Claim request was sent to the New York City Comptroller's office on June 18, 2018 and the results are pending.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date